

# AIA® Document A111™ – 1997

## **Standard Form of Agreement Between Owner and Contractor**

*where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated  
Guaranteed Maximum Price*

**AGREEMENT** made as of the 11th day of April in the year 2005.  
*(In words, indicate day, month and year)*

**BETWEEN** the Owner:  
*(Name, address and other information)*

Gables Marquis, LLC.  
7284 West Palmetto Park Road, Suite 106  
Boca Raton, Florida 33433

and the Contractor:  
*(Name, address and other information)*

Coscan Construction, LLC.  
5555 Anglers Avenue, Suite 1A  
Fort Lauderdale, Florida 33312

The Project is:  
*(Name and location)*

Gables Marquis  
3232 Coral Way  
Miami, Florida

The Project shall consist of 177 residential condominium units including 8 townhome units with an overall program that will consist of approximately 212,136 sellable square feet, approximately 422,966 gross square feet and a parking garage with 332 parking spaces, a swimming pool, and other residential amenities.

The Architect is:  
*(Name, address and other information)*

Cohen Freedman Encinosa & Associates Architects, P.A.  
8085 N.W. 155<sup>th</sup> Street  
Miami, Florida 33016

The Owner and Contractor agree as follows.

### **ARTICLE 1 THE CONTRACT DOCUMENTS**

§ 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, and other Conditions), Drawings, Specifications, as set forth on the Drawings, Addenda issued prior to execution of this Agreement, between Owner and Contractor ("Contract") other documents enumerated in Article 15 listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by the Associated General Contractors of America.

supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 A set of master "as built" drawings shall be kept on file with Contractor's Project Superintendent and updated monthly as described in this Contract. As-built drawings shall also be updated by each subcontractor who builds. These "as-built" drawings will be delivered to the Architect at Final Payment.

§ 1.3 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Exhibit "B". Such revised Drawings and Specifications shall be furnished to the Contractor in accordance with schedules agreed to by the Owner, Architect and Contractor. The Contractor shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications. Nothing in this Agreement shall be deemed to require, or authorize, or permit Contractor to perform any act which would constitute design services, laboratory testing, inspection services, investigations, or the practice of architecture, professional engineering, certified public accounting or law. With the exception of the Guaranteed Maximum Price referred to in this Agreement, the recommendations, advice, budgetary information and schedules to be furnished by Contractor under this Agreement are for the sole use of Owner and shall not be deemed to be representations, warranties, or guarantees or constitute the performance of licensed professional services.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. The Work consists of the construction of the Project as reflected in the Contract Documents. All work shall comply with all applicable ordinances, including all applicable codes referenced on the Contract Documents.

The Work includes all labor, materials, supervision and all items reasonably necessary and inferable from the Contract Documents prepared by the Architect.

Contractor agrees to inspect, supervise, remove debris, organize, coordinate, direct and construct the Project in accordance with the Drawings, labeled and attached to this Contract as Exhibit "A", as well as those other documents enumerated in Article 15 of this Contract entitled "Enumeration Of Contract Documents".

The Work shall only be altered or modified from the Contract Documents incorporated herein upon receipt of a written change order properly executed by the Owner, Contractor and Architect. Contractor agrees to perform the Work in the most expeditious and economical manner consistent with the interests of the Owner, and warrants that the Work shall comply with the Contract Documents. Contractor will not be liable to Owner for design defects for Work performed in accordance with the Contract Documents. The Contractor shall coordinate the scheduling and performance of all Work with utility companies and governmental agencies that are providing services in accordance with the applicable Project Schedule and the Contract Documents. Contractor shall be responsible for the means and methods of construction in order to satisfy the requirements of the Contract Documents.

In performing its obligations under this Contract, the Contractor shall be deemed an independent Contractor and not an agent or employee of Owner. The Contractor shall have exclusive authority to manage, direct and control the Work. Owner is interested in only the results obtained and not in the methods used in achieving the results.

## ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Notwithstanding the foregoing or any other provision of the Contract Documents, Contractor shall not be deemed a trustee or fiduciary of the Owner.



The Contractor does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price, subject to the terms of Section 7.1.4 hereof. The recommendations and advice of the Contractor concerning design alternatives shall be subject to the review and approval of the Owner and the Architect. It is not the Contractor's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Contractor recognizes that portions of the Drawings and Specifications are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing.

#### ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The Contract Time shall be measured from the Date of Commencement.

§ 4.1.1 The Date of Commencement shall be defined as the last or the following to occur:

- X (1) the execution of this Agreement
- (2) the Owner's acceptance of the Contractor's Guaranteed Maximum Price
- (3) delivery to Contractor of evidence, reasonably satisfactory to Contractor, that the Owner's construction financing for the Project has been closed without post-closing conditions to its funding, in an amount sufficient to cover the Guaranteed Maximum Price
- (4) delivery to Contractor of evidence, reasonably satisfactory to Contractor, that the builder's risk policy required hereunder is in effect
- (5) the necessary building permit for the Work has been issued by the City of Miami Building Department
- (6) delivery to Contractor of the proper notice to proceed with construction of the Work from the Owner
- (7) Delivery of the Contractor Payment & Performance Bonds to Owner
- (8) written consent by both parties to the agreed Date of Commencement

§ 4.1.2 "Substantial Completion" of the Work shall be defined as the date upon which the last of all of the following events have occurred:

- (a) A Temporary Certificate of Occupancy for the entire building, including all units, issued by the appropriate governmental authorities has been delivered to Owner;
- (b) All utilities, mechanical, electrical, plumbing and other systems serving the building comprising the Work shall be operational;
- (c) All sidewalks leading to and from the building comprising the Work and abutting such building parking areas are in place and clean;
- (d) All Work described in this Contract and Contract Documents has been completed as evidenced by a written "Certificate of Substantial Completion" issued by the Architect except for minor Punch List items specified in accordance with this Contract that would not, in the opinion of either the Architect or the Owner, enable the Owner the closing or convey of a unit with purchasers.

§ 4.2. Excusable Delays, as defined below, shall entitle the Contractor to an extension of the Contract Time. Contractor will only be entitled to an extension of time if the Excusable Delay impacts the critical path for the Project based upon documentation furnished to the Owner, including the daily log, updated schedule and other documentation that the Owner may reasonably require. Failure of the Contractor to provide written notice of the delay within ten (10) business days of the first occurrence of the delay will deprive Contractor of its right to an extension of time. Excusable Delay will only include events listed below and which cause a critical path delay to the Project. In addition, Contractor shall be entitled to additional compensation for time related costs for the extended period of time of an Excusable Delay which is not concurrent with a pre-existing Contractor caused delay to the critical path. Contractor will only be entitled to recover its actual direct costs of an Excusable Delay as

supported by documentation as the Owner may reasonably require. No other damages will be permitted for Owner caused delay for which a time extension is timely and properly granted.

"Excusable Delay" means:

- (i) any delay caused by Owner, including but not limited to those described below, which actually and directly causes delay to the Work;
- (ii) any delay caused by design errors and/or omissions by the designers;
- (iii) any delay caused by permitting agencies, building department, building inspectors, or any governmental agencies;
- (iv) any delay caused by changes and/or additions to the Scope of Work made by the Owner and/or Architect;
- (v) any delay caused by weather in excess of ten (10) rain days per year impacting activities that are weather sensitive, or weather which prevents crane operations;
- (vi) any delay caused by force majeure events such as fire, acts of terrorism, labor disputes, storms, hurricanes and other natural disasters beyond the control of the Contractor;
- (vii) any delay caused by Architect and/or its consultants;
- (viii) any delay caused by failure of the Owner to make timely payment to Contractor or Subcontractors, in accordance with this Agreement;
- (ix) any delay caused by Owner's failure to make timely decisions within the time periods provided for in the Contract Documents or as necessary to avoid delay to the Work;
- (x) any delay caused by the City of Miami Building Department (COMBD) (not resulting from Contractor's acts or omissions) in granting or denying Contractor's requests for TCOs, subject to the qualification that Contractor shall not be entitled to a time extension for the first ten (10) days of COMBD caused delay.
- (xi) any other delay caused by reasons or events not within the control of Contractor.

Contractor agrees to keep Owner informed of any instances where Excusable Delays have occurred or may occur by means of monthly reports and/or written correspondence.

**§ 4.3.1** The Contractor shall achieve Substantial Completion of the entire Work not later than 19 months (579 days) from the date of commencement, or as follows. "Days" as referenced in the Contract Documents means "consecutive calendar days" unless otherwise stated.

Pursuant to time-frames established in the Project Schedule, the Contractor will request and endeavor to obtain phased temporary certificates of occupancy ("Phased TCO's") for several Condominium stories at a time, as well as Final TCO ("Final TCO"). The Project Schedule will set forth the target dates for the Phased TCO's, and target date for the Final TCO ("Target Date For Final TCO"). For purposes of this Agreement and all other Contract Documents, Substantial Completion of the Work or designated portion thereof shall have the meaning ascribed thereto in Section 4.1.2 above. However, inasmuch as the granting of requests for Phased TCO's is subject to the approval of the City of Miami Building Department in its discretion, the target dates for each Phased TCO set forth in the Project Schedule are not guaranteed by the Contractor and are subject to adjustment and/or deletion if Phased TCO's are not permitted by the City of Miami Building Department. In the event Phased TCOs are not permitted by the Building Department, the Date of Final TCO shall be the date of Substantial Completion or 579 days from the Date of Commencement.

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)*

**Portion of Work**  
Entire Project

**Substantial Completion date**  
November 15, 2006 (based upon anticipated Date of Commencement of April 15, 2005)

, subject to adjustments of this Contract Time as provided in the Contract Documents.



*(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)*

The parties acknowledge and agree that the actual damages that may be suffered by the Owner in the event that the Final TCO is not issued on the target date as set forth in the Project Schedule are difficult or impossible to calculate with precision. Accordingly, in the event the Final TCO is not timely obtained for any reason other than Excusable Delays (defined above) then the Contractor shall pay to the Owner the following liquidated damages as Owner's sole and exclusive remedy for such delay; provided, however, under no circumstances shall any such liquidated damages exceed in the aggregate the sum of \$250,000.00. In the event that the Final TCO is obtained:

- (a) during the first thirty (30) calendar day period immediately following the Final TCO target date as set forth in the Project Schedule, no liquidated damages shall be assessed.
- (b) after the end of the first thirty (30) calendar day period following the Final TCO target date, liquidated damages at the rate of \$2,500 per late day shall be assessed until such time as the said \$250,000.00 aggregate maximum liquidated damages are achieved.

In the event the Final TCO is obtained prior to its target date as set forth in the Project Schedule, then the following incentive bonus shall be paid by Owner to Contractor; provided, however, under no circumstances shall any such bonus exceed in the aggregate the sum of \$250,000. In the event that the Final TCO is obtained:

- (a) during the first thirty (30) calendar day period immediately preceding the Final TCO target date as set forth in the Project Schedule, no bonus shall be assessed.
- (b) at any time prior to the first (30) calendar day period preceding the Final TCO target date as set forth in the Project Schedule, a bonus at the rate of \$2,500.00 per early day shall be paid by Owner to Contractor until an aggregate maximum bonus of \$250,000.00 is achieved.
- (c) any applicable bonus shall be paid by Owner to the Contractor at the time of the next Application for Payment following the date the Final TCO is actually obtained.

**4.3.2** Once the Contractor notifies the Owner that the Work or a portion thereof is Substantially Complete, in accordance with Article 4 then within five (5) days, the Owner and Architect shall conduct an inspection of the Project or the portion thereof. If Architect determines that the inspection of a portion is premature, a future inspection of the area will be scheduled and conducted. However, if any subsequent inspection of the area is premature in the opinion of the Architect, Contractor will reimburse Owner for all costs and expenses associated with this second and every other inspection deemed to be premature in the opinion of the Architect. Following the inspection(s), within seven (7) days the Owner or Architect shall prepare a written Punch List specifying any Work required to conform those inspected portions of the Project to the requirements of the Contract Documents and the written Punch List shall be delivered to the Contractor. The Architect will endeavor to prepare one (1) written Punch List except in the event that the Parties reasonably agree that multiple written Punch Lists for certain portions of the Project are appropriate. All Punch List Work items except for long lead time delivery items as identified by the Architect, shall be remedied in a good and workmanlike manner in compliance with the Contract Documents, no later than thirty (30) days from delivery of the written Punch List to the Contractor. Contractor shall endeavor to expedite the prompt completion of all long lead delivery items set forth on the Punch List. To the extent that Punch List items have not been timely completed as described herein, the cost of repair or replacement to any items requiring Work by Owner, both costs and items both to be as determined by the Architect, shall be deducted from Final Payment as referenced in Article 12.2. The Punch List items must be complete to the satisfaction of Architect, or the reasonable value or cost of correction may be withheld from the Final Payment as referenced in Article 12.2 below.

## **ARTICLE 5 BASIS FOR PAYMENT**

### **§ 5.1 CONTRACT SUM**

**§ 5.1.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

**§ 5.1.2** The Contractor's Fee is:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)*



A Fixed Fee of \$1,400,000. A four (4%) percent fee shall apply to all increases to the GMP. Deductive changes shall not result in a reduction of the Fee.

**§5.1.3** The estimated Cost of the Work includes the Contractor's Contingency Reserve, which is a sum established by the Contractor for the Contractor's exclusive use to cover costs which Contractor determines in its sole discretion are appropriate and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order ("Contingency Reserve"). Prior to utilization of Contingency Reserve, Contractor shall notify the Owner as to the intended purpose and use of the Contingency Reserve. Contractor shall then request written consent from the Owner, which shall not be unreasonably withheld. **The Contingency Reserve will be a lump sum of \$800,000.** The Contingency Reserve is also included for the purpose of defraying, at Contractor's sole discretion, unanticipated charges and additional expenses due to errors in estimating both time and money but excludes expenses associated with concealed conditions not reasonably anticipated, design defects or deficiencies

**§ 5.2 GUARANTEED MAXIMUM PRICE**

**§ 5.2.1** The order of precedence of the Contract Documents is as follows:

- .1 Change Orders
- .2 The GMP Estimate Summary (and attach General Contractors Estimate Detail) (Exhibit "B"), and Assumptions & Clarifications (Exhibit "C");
- .3 Drawings and Specifications;
- .4 The A111 Agreement;

(Paragraph deleted)

- .5 A201 General Conditions;

**§ 5.2.2** The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed , the GMP of Thirty-Eight Million Six Hundred Thirty-Four Thousand Dollars (\$38,634,000) ("GMP") and the Contractor assumes all risks and responsibilities for performing all Work for the GMP. In the event that the cost of the Work exceeds the GMP, Contractor shall pay such excess from its own funds and Owner shall not be required to pay any part of such excess.

In the event savings from the GMP are recognized at Final Completion of the Project, the Owner and Contractor agree to share in the net amount of the savings realized as follows: The initial \$250,000 in savings shall be retained by the Owner, and thereafter savings shall be shared on a 50/50 split, for which the Contractor shall be paid in the final application for Payment.

**§ 5.2.3** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

(Paragraphs deleted)

**§ 5.2.4** Unit prices, if any, are as follows:

Description	Units	Price (\$ 0.00)
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**§ 5.2.5** Allowances, if any, are as follows

*(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)*

Allowances	Amount (\$ 0.00)	Included items
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*(Paragraph deleted)*

See Exhibit "D"

**§ 5.2.6** Assumptions: Exhibit "B"

**ARTICLE 6 CHANGES IN THE WORK**

**§ 6.1** Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-1997. Deductive charges shall be governed by Section 5.1.2 above. Change order shall otherwise be governed by Subparagraph 7.2.1 of AIA Document A201-1997.

**§ 6.2** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 6.3** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Section 5.1.2 of this Agreement.

**§ 6.4** Owner may order changes in the Work in writing, consisting of (a) additions, deletions, and modifications in the Work as specified in the Contract Documents upon which the Owner's approved budget for the Project was prepared and/or previously modified; (b) work which must be performed in respect of unforeseen conditions; (c) changes in the intensity and pace of the Work; (d) uncovering and covering of a portion of the Work, if such portion, upon uncovering, is found to be acceptable; and (e) items which are specifically the responsibility of Owner under this Agreement, but are being handled and paid through Contractor as a matter of convenience to the Owner. Such changes shall be known as "Scope Changes" or "Change Orders". The events described in Paragraph 8.3.1 of the General Conditions shall also result in the issuance of a Scope Change if said events lead to an increase in the Guaranteed Maximum Price and/or the Cost of the Work. The amount of each Scope Change, for such changes not impacting the Project Schedule, shall be the Contractor's best estimate of the cost of the change in Work ("Cost Estimate of Change Order") plus a factor of zero percent (0%) for an estimate of additional "general condition items" (as said phrase is generally understood in the construction industry). The amount of each Scope Change, for such changes that have an impact on the Project Schedule, shall be the Contractor's best Cost Estimate of Change Order plus an estimate of additional "general condition items". Scope Changes shall also include anticipated expenditures for Work and building permits if not explicitly included in the Guaranteed Maximum Price. Scope Changes shall be approved in writing by Owner promptly upon submission by Contractor, failing which the Contractor may refuse to proceed with the change in the Work. The Guaranteed Maximum Price shall be increased by the total amount of each and every Scope Change. The form of writing constituting Owner approval may include, but is not limited to, a Proposed Change Order ("PCO") signed by the Owner's representative.

**§ 6.5** Contractor shall not apply the four percent (4%) fee nor General Conditions to the following items:

1. Awnings
2. Signage
3. Fountains
4. Plumbing fixtures
5. Electrical fixtures



6. Security
7. Additions to landscaping allowance
8. Common area flooring; and
9. Common area millwork

Other changes to the Work shall be subject to Fee as set forth in Section 6.4 above.

#### ARTICLE 7 COSTS TO BE REIMBURSED

##### § 7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.1 The Contractor's Cost to construct the Project shall include (a) the direct cost of onsite labor, supervision, and materials actually committed for the proper construction of the Project, and (b) indirect costs such as home office overhead included as a component of the Contractor's cost to construct the Project except as provided below. Contractor acknowledges and agrees that Owner shall be obtaining construction financing for the Project through Key Bank (the "Lender"). The parties further acknowledge and agree that this Contract is conditional upon Owner finalizing such financing and that this Contract is approved by the Lender. In the event Contractor, with the prior written consent of Owner, commences Work prior to Owner obtaining such financing, and/or before this Contract is approved by Lender, Owner may notify Contractor to stop and cease any further Work and Owner shall only pay Contractor for the actual Work performed and committed costs as previously authorized in writing by Owner. Costs as defined herein shall be actual costs committed by the Contractor, less all discounts, rebatements, and salvage that shall be taken by the Contractor, subject to Article 9 of this Contract. All payments made by the Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of the Contract, are included within the GMP specified in Paragraph 5.2 above; provided, however, that in no event shall the Owner be required to reimburse the Contractor for any portion of the cost of the Work incurred prior to the Commencement Date unless Contractor has received the Owner's written consent prior to incurring such costs. Owner hereby acknowledges that it has previously consented in writing or otherwise to Contractor entering into subcontracts and authorizing subs to proceed with the preparation of shop drawings and other submittals and has authorized Contractor to hire key project personnel and to incur recruiting costs and legal fees which shall be reimbursed by the Owner.

§ 7.1.2 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

§ 7.1.3 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

§ 7.1.4 Anything in this Agreement or any of the Contract Documents contained to the contrary notwithstanding:

- (1) Where (i) the price of construction materials (including, without limitation, concrete material, steel, reinforcing steel, post-tension cable, miscellaneous metals, drywall or metal studs) increases or decreases significantly during the term of the Agreement, and (ii) with respect to any price increase in any such construction materials, (a) said increase occurs through no fault of the Contractor, and (b) the price of the construction material was not guaranteed to Contractor or Owner for the term of the Project by the supplier of such construction material then, in such event, the Guaranteed Maximum Price shall be equitably adjusted (i.e., increased or decreased, as applicable) by change order as provided for in this Agreement. A significant price increase or decrease means a change in price on any individual estimate line item or any subcontract/purchase order for any of the aforesaid construction materials, from the date of the Agreement execution to the date of performance by an amount exceeding two percent (2%) with the exception of Rebar (Owner to pay 100% of any increases). Such price increase or decrease shall be documented by vendor quotes, invoices, catalogs, receipts or other documents of commercial use.



- (2) In cases where the Contract Sum is increased due to escalation, Contractor agrees not to charge increased General Conditions or Fee.

**§ 7.2 LABOR COSTS**

**§ 7.2.1** Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

**§ 7.2.2** Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval.

- .1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.
- .2 Wages or salaries and bonuses (in accordance with Contractor's standard policies) and vehicle allowance of the Contractor's supervisory and administrative and technical personnel and all other personnel who provide services in connection with the Work shall be billed in accordance with the below hourly rate schedule...
- (If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)*

Position	Hourly Billing Rate
<u>Management &amp; Administrative</u>	
Vice President Construction	\$ 120.00
Senior Project Manager	\$ 113.00
Project Manager	\$ 88.00
Assistant Project Manager	\$ 53.00
Project Engineer	\$ 47.00
General Superintendent	\$ 101.00
Assistant Superintendent	\$ 63.00
Project Accountant	\$ 32.00
Clerk of the Works	\$ 28.00
<u>Hourly</u>	
Carpenter Forman	\$ 31.00
Labor Forman	\$ 31.00
Layout Engineer	\$ 43.00
Carpenter	\$ 25.00
Carpenter Helper	\$ 21.00
Laborer	\$ 21.00
Hoist Operator	\$ 18.00

Hourly rates include payroll taxes and insurance and all employee benefits  
Hourly rates do not include employee incentive bonuses

- .3 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions.

*(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

**§ 7.2.3** Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ 7.2.4** Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

**§ 7.3 SUBCONTRACT COSTS**

**§ 7.3.1** Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

**§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION**

**§ 7.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS**

**§ 7.5.1** Costs, as outlined herein will be included in the GMP, including transportation and maintenance of all material, dismantling and removal of equipment, temporary facilities, and hand tools (not owned by the workers) used in the performance of the Work. Contractor shall only be entitled to the costs for storage subject to approval by Owner which approval shall not be unreasonably withheld. Any such items used but not consumed, which are paid for by the Owner, shall become the property of the Owner and shall be delivered to the Owner upon completion of the Work in accordance with instructions furnished by the Owner. If the Owner elects, however, the Contractor shall be given the option to purchase any such items from the Owner at fair market value, or such other price that is mutually acceptable to the Owner and the Contractor. Upon demand by the Owner, the Contractor shall furnish the Owner with any information and documentation necessary to verify the period of time for which such items were used in connection with the Work.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

**§ 7.5.3** Costs of removal of debris from the site.

**§ 7.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 7.5.5** That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

**§ 7.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

**§ 7.6 MISCELLANEOUS COSTS**

**§ 7.6.1** That portion of insurance and bond premiums that can be directly attributed to this Contract not otherwise paid by Owner but required by this Contract shall not be included in the cost of the Work for purposes of calculating the Contractor's fee but will be included in calculation of the GMP. Owner shall pay the cost of all permits (including permit fees for all plan revisions) and impact fees.

**§ 7.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

**§ 7.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work. This paragraph shall not apply to instances where the Contractor elects to use a particular design, process or product that is contrary to the Contract Documents.

**§ 7.6.6** Data processing costs directly related to the Work.

**§ 7.6.7** Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

**§ 7.6.8** Overtime/premium time costs required to maintain Project Schedule.

**§ 7.6.9** Fines or penalties not related to the gross negligence of the Contractor.

**§ 7.6.10** Costs associated with cleaning or repairing property, or vehicles or structures which may be damaged by debris, concrete, stucco, paint or material which becomes wind-born as long as Contractor takes reasonable precaution to avoid same.

**§ 7.6.11** All insurance premiums and deductibles related to Contractor's involvement with the Work, including without limitation, all costs for deductibles or penalties pertaining to Contractor's or Owner's Project insurance policies, costs of any payment and/or performance bond, and costs of any other insurance required by Contractor or of the Contractor in connection with the Work. General Liability and excess liability premiums shall be billed at the flat rate of \$15/\$1000.

**§ 7.6.12** Other cost or expense incurred by Contractor in the performance of the Work and compliance with the terms of this Agreement and all other Contract Documents and not specifically excluded in this Agreement, so long as said cost or expense is usual and customary in the industry and usual and customary for the Work performed hereunder. Any cost or expense which in Contractor's reasonable judgment is not usual and customary, ("Unusual Cost or Expenses") will be subject to Owner's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Any Unusual Cost or Expense will be submitted to the Owner in writing for approval.

## **§ 7.7 OTHER COSTS AND EMERGENCIES**

**§ 7.7.1** Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

**§ 7.7.2** Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of AIA Document A201-1997.

**§ 7.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the failure to fulfill a responsibility of the Contractor in accordance with this Contract.

**§ 7.7.4** Prior to the commencement of the Work, Contractor shall submit to the Owner an invoice "Mobilization Billing" to include all estimated out of pocket costs for the 1st months activities on the Project including general conditions, payment and performance bond costs, general liability insurance, utility deposits, legal and recruiting



fees, and other similar types of start-up costs. Within 10 days after receipt of the Mobilization Billing, Owner shall make payment to Contractor for the total amount billed. With each application for payment, Contractor shall continue "billing in advance" for its estimated general conditions costs through the duration of the Project

**§ 7.7.5 General Conditions.** The costs of all of the following items shall constitute the "General Conditions" costs of the Project. (The General Conditions Estimate Detail is attached as part of Exhibit B).

- .1 all costs associated with the Contractor's on-site staff, including but not limited to budgeted pro-rata portion of Vice President of Construction, budgeted pro-rata portion of senior project manager salary, project manager, assistant project manager(s), Contractor's, purchasing agent(s) (or a pro-rata portion thereof), Contractor's estimating personnel (or pro-rata portion thereof), project engineer(s), project accountant, job clerk, project secretary, general superintendent, superintendent, assistant superintendent(s), and all other on-site administrative and general operating items required to complete the Work and the Project, including labor costs. General Conditions costs will be inclusive of all salaries, payroll taxes and insurance, employee benefits, bonuses and raises for personnel employed by the Contractor in performing the Work. Any employee bonuses budgeted in General Conditions costs will be paid at the sole discretion and authority of the Contractor. General Conditions costs shall also include outside consultants for scheduling, safety and cost estimating and such other consultants that may be necessary in order to perform the Work, including, without limitation, costs of recruiters and employment agencies for employee hirings. All labor costs shall be billed in accordance with the hourly rates listed in Article 7.2.
- .2 Salaries and wages of accounts payable personnel and FF&E purchasing manager (or prorata portion thereof) located in Contractor's primary office engaged in the performance of the Work.
- .3 Costs of waste and removal of debris from the site.
- .4 Costs incurred in the office or field in connection with the Project for reproduction costs, photographs, costs of telegrams, messengers, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office, charges associated with computer/electronic management systems and document management systems (including any Web enabled systems) used on the Project, heat, light, power, water, sanitary facilities, first aid facilities, safety protection, safety personnel and advisors, whether protection, elevator services and hoisting and all items ancillary to foregoing.
- .5 That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work including meetings and travel to yards and fabrication plants.
- .6 Rental and/or leasing of automobiles (including automobiles and vehicle allowances), provided by Contractor to those employees providing services in connection with the Work and for such time as is devoted to the Work.
- .7 Data processing costs related to the Work in the amount of \$2,500 per month.
- .8 Accounting support costs
- .9 Expenses incurred in accordance with Contractor's standard personnel policy including recruiting fees, relocation and temporary living expenses for project employees and personnel required for the Work, in cases where it is necessary to relocate such personnel from distant locations.
- .10 Compliance with and all other items relating to requirements of insurers and of safety, health, occupational environmental and other laws, regulations, or rulings of governmental agencies, but nothing stated in this Agreement shall diminish the responsibility of the Subcontractors regarding site safety.
- .11 Cost of offsite parking facility, shuttle bus and driver, metered parking.
- .12 Reasonable expenses for business-related meals and entertainment costs, as well as Contractor's topping-off party expenses.
- .13 Costs associated with Project close out and As-Built Drawings.
- .14 All legal fees and expenses incurred by Contractor in the preparation, negotiation and execution of the Agreement and all Contract Documents, and other documents related to the Agreement and Contract Documents, such as, Subcontractor agreements.
- .15 The cost for computer software licensing, data storage, and software support services.
- .16 The cost of data transmission lines and hardware installation and maintenance.
- .17 Preconstruction video survey referenced in Article 14.1.11.

**§ 7.7.6 Costs chargeable to the Warranty and Turnover Fund as set forth in Section 14.7.4 below.**

**ARTICLE 8 COSTS NOT TO BE REIMBURSED**

**§ 8.1** The Cost of the Work shall not include:

**§ 8.1.1** Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Sections 7.2.2 and 7.2.3 or as may be provided in Article 14.

**§ 8.1.2** Expenses of the Contractor's principal office and offices other than the site office.

**§ 8.1.3** Overhead and general expenses, except as may be expressly included in Article 7.

**§ 8.1.4** The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

**§ 8.1.5** Rental costs of machinery and equipment, except as specifically provided in Section 7.5.2.

**§ 8.1.6** Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

**§ 8.1.7** Any cost not specifically and expressly described in Article 7.

**§ 8.1.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

**ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS**

**§ 9.1** Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured. The Contractor shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the Owner with seven (7) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds necessary to obtain such discount, rebate, or refund on behalf of the Owner in accordance with the requirements of this Paragraph.

**§ 9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 10.1** Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Contractor shall then determine, with the advice of the Owner and the Architect, which bids will be accepted, and approval of bids will not be unreasonably withheld by Owner. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

**§ 10.2** If a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.



§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

#### ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, computer generated records, cost reports, and other data relating to this Contract, and the Contractor shall preserve these for a period of five (5) years after Final Payment, or for such longer period as may be required by law. All records shall be maintained in accordance with generally accepted accounting practices, consistently applied. Subcontractors retained by the contractor on a "cost plus" basis shall have the same obligations to retain records and cooperate with audits as are required of the Contractor under this Article 11. If any inspection by the Owner of the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, computer generated records and any other data relating to the Contract Documents reveals an overcharge, including without limitation, any untimely requests for payment as described in Paragraph 13.3, the Contractor shall provide an adjustment in the next subsequent monthly billing. The requirements of this Article 11 shall not apply to any portion of an overcharge that is the subject of good faith dispute between the Owner and the Contractor. All records shall be available for inspection and copying by Owner and its designee after providing Contractor with a five (5) day advance written notice. The inspection shall take place at Contractor's offices or another mutually convenient location at a mutually convenient date and time. The costs of duplicating documents produced shall be at the Owner's expense.

#### ARTICLE 12 PAYMENTS

##### § 12.1 PROGRESS PAYMENTS

§ 12.1.1 The "Schedule of Values" for the Project reflecting that one hundred (100%) percent of all components of Work to be performed will accompany the initial Application for Payment requisition to be submitted by Contractor. Based upon Applications for Payment submitted to the Architect and Owner by the Contractor and Certificates for Payment issued by the Architect, and approved by the Lender and Owner, the Owner shall make progress payments to the Contractor as provided below and elsewhere in the Contract Documents. All Applications for Payment shall be submitted in accordance with Subparagraph 12.1.3 based upon the Work completed and materials properly stored on or off the Project as long as the manner of storage has been approved by the Architect and consistent with requirements of the Lender. The form of such Applications for Payment shall be generated from Contractor's Timberline Project accounting software. Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect shall be subject to (a) compliance with all requirements of the Lender, as relating to Contractor and/or Contractor's responsibilities to the Project as set forth in the Contract Documents, with regard to the disbursement of funds for items covered by the Certificate of Payment and (b) approval of all the reasonable terms of Lender, as relating to Contractor and/or Contractor's responsibilities to the Project as set forth in the Contract Documents. Once the requirements specified herein have been satisfied, the Owner shall make payment in the manner and within the time provided in the Contract Documents. As a pre-requisite to receiving any payments pursuant to an Application for Payment, Contractor shall provide an updated schedule, as well as lien releases (partial or full) from subs, suppliers and vendors for work performed in the prior pay period, in the form as required by the Contract Documents.

12.1.1.1 The Owner shall withhold from each payment to Contractor a sum equivalent to ten (10%) percent of the amount earned as of that pay period, as retainage for completion of all Work pursuant to this Contract; provided however that no Retainage shall be withheld from (1) Contractors Fee, (2) Contractors General Conditions, (3) material only purchases, (4) labor only contracts, and (5) any other subcontracts agreed to in advance by Owner and General Contractor to be exempt from Retainage subject to final approval to be made by Lender. Retainage shall also be applicable to Change Order Work. Retainage shall be paid by Owner to Contractor in accordance with Article 12.2 Final Payment. In order to assure the timely issuance of the full payment requested each month for General Conditions, the General Conditions billings described in Section 7.7.4 shall be subject to review by Owner for a period of sixty (60) days after Owner's receipt of the supporting documentation for the General Conditions billing. Any discrepancies shall be adjusted in the next monthly billing.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month,;



§ 12.1.3 Provided an Application for Payment (which Application shall include a projection of the costs through the end of the relevant month) is received by the Owner and the Architect not later than the 25th day of a month, the Owner shall make payment to the Contractor not later than twenty (20) days thereafter. If an Application for Payment is received by the Owner and the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Owner receives the Application for Payment. If payment has not been received within the time as set forth above, the payment shall bear interest at the Prime Rate plus three percent (3%) (the "Default Rate"). For purposes hereof, Prime Rate shall mean the annual interest rate announced by Bank of America from time to time as its prime rate. The first time Owner should fail to timely pay in accordance with this paragraph, Contractor shall grant Owner a fifteen (15) day grace period in which to make payment. Subsequently, no grace period shall exist. Application for Payment shall not be made more often than once a month.

§ 12.1.4 General Conditions billings shall be submitted and processed as set forth in Sections 7.7.4 and 12.1.1.1. With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Contractor shall submit to Owner on a monthly basis a statement of all of Contractor's costs incurred during the period covered by the Application for Payment in the performance of the Work as described in this Contract, together with copies of material invoices receipts, delivery tickets, payroll records, subcontractor invoices and such other documentation substantiating Contractor's costs, as Owner may reasonably request. The monthly statement of Contractor's costs, together with supporting documentation, shall be submitted to Owner no later than the thirtieth (30<sup>th</sup>) day of the month; the first Application for Payment to be submitted within thirty (30) days from execution of this Contract by both parties. The first such statement shall include an itemization of all of Contractor's costs to the date of the statement with a separate line item for the Contractor's Fee as described in Article 5 of this Contract.

§ 12.1.5 Each Application for Payment shall be based on the most recent Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. All Applications for Payment shall include an updated Project Schedule that conforms with the requirements of the Contract Documents.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 Subject to 7.7.4 and 12.1.1.1 and other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values, less retainage of ten (10%) percent except those items that shall be exempt from Retainage in 12.1.1.1. (and subject to final approval of Lender). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;
- .2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

- .3 The Contractor's Fee shall be computed by applying the rate of 3.8% to the Cost of the Work described in the two preceding, up to the Fixed Fee amount set forth in Section 15.1.2.
- .4 subtract the aggregate of previous payments made by the Owner;
- .5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997..

**§ 12.1.8** Payments to Subcontractors shall be subject to retention of not less than ten percent (10%). However, when the Work of any particular Subcontractor is fifty percent (50%) completed and is performing work in a satisfactory manner (both as to schedule and quality), Contractor, with the prior consent of Owner and Lender, which consents shall not be unreasonably withheld, conditioned or delayed, and on a Subcontractor-by-Subcontractor basis, shall be entitled not to withhold any additional retainage from payments to said Subcontractor. Retainage shall be paid on a Subcontractor-by-Subcontractor basis upon 100% completion of a particular Subcontractor's Work to the reasonable satisfaction of Contractor, Owner and Lender. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

**§ 12.1.9** In taking action on the Contractor's Applications for Payment, the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect and Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect and Owner has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

**§ 12.1.10** Neither Owner's review, approval nor payment for any Work rendered under this Contract shall be construed to operate as a waiver of any rights of any cause or satisfaction arising out of the performance of this Contract, and the Contractor shall be and remain liable to the Owner in accordance with applicable law for all damages to the Owner caused by the Contractor's failure to properly perform any portion of the Work furnished under this Contract. The rights and remedies of the Owner provided for under this Contract are in addition to other rights and remedies provided by law.

**§ 12.1.11** Payment by Owner based upon any Application for Payment, including the request for Final Payment shall not constitute approval or acceptance of any item of Work that comprises the Application for Payment.

## **§ 12.2 FINAL PAYMENT**

**§ 12.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when all conditions precedent as outlined below have been satisfied:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.
- .3 delivery to Owner of the Contractor's Final Affidavit as referenced in Section 713.06, Florida Statutes;
- .4 delivery by Contractor to Owner of the Consent of Surety to Final Payment;
- .5 delivery by Contractor to Architect of the as-built drawings as referenced in Article I above.



.6 delivery by Contractor to Owner of all warranties and close-out documents as required by the Contractor Documents.

.7 delivery by Contractor to Owner a Final Certificate of Occupancy for the entire Project.

**§ 12.2.2** Final Payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, and satisfaction of those other items listed in Subparagraphs 12.2.1 through 12.2.1.5 inclusive above as long as the existence of any minor Work or remaining punch list Work (hereinafter collectively the "Remaining Work") shall not delay or result in a denial of the issuance of the Final Certificate of Occupancy by the appropriate governmental agency, provided that a reasonable sum, being one hundred fifty (150%) percent of the value of the Remaining Work as determined by the Architect may be withheld from the Final Payment to secure Contractor's performance of any such Remaining Work. Disbursement shall be paid monthly in accordance with the Contract Documents to Contractor for payment of Remaining Work that is completed to the satisfaction of the Architect. The Lender shall be notified in writing of all such Remaining Work. All Remaining Work shall be completed by the Contractor within thirty (30) days after the issuance of the Architect's Final Certificate of Payment and satisfaction of the other items listed in subparagraph 5.2.2 above. If any Remaining Work is not completed by Contractor within such **forty-five (45)** day period, the Owner, after providing a seven (7) day written notice to Contractor, may complete such outstanding Remaining Work and charge the cost and expense to the Contractor.

**§ 12.2.3** The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect and Owner by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect and Owner will, within seven days after receipt of the written report of the Owner's accountants, either notify the Contractor and Owner in writing of the Architect's or Owner's reasons for withholding a portion of the Final Payment. All undisputed amounts shall be paid immediately. The time periods stated in this Section 12.2.3 supersede those stated in Section 9.4.1 of the AIA Document A201-1997.

**§ 12.2.4** If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand resolution through mediation and litigation of the disputed amount. Pending a final resolution, through litigation, the Owner shall pay the Contractor all amounts not in dispute within 10 days of receipt of the Owner's accountants review report, or within 30 days of submission by Contractor if the Owner's accountant's review report is not issued within 30 days.

**§ 12.2.5** If, subsequent to Final Payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

**12.2.6** Neither the Final Payment nor any provision of the Contract Documents, nor partial or entire use of occupancy of the premises by the Owner, shall constitute an acceptance of the Work not performed in accordance with the Contract Documents and which was not known or discoverable through the exercise of reasonable diligence, or relieve the Contractor of liability in respect to any express warranties or responsibilities for any faulty materials or workmanship which was not known or discoverable through the exercise of reasonable due diligence, all of which shall be replaced AT NO EXTRA COST to the Owner, unless the GMP has not been fully expended in which case Contractor shall be paid up to the GMP. It is the intent of the parties that as part of the punch list process described in 12.2.2, the Owner shall notify the Contractor, in writing, of all defective and non-conforming work known to the Owner.

#### **ARTICLE 13 TERMINATION OR SUSPENSION**

**§ 13.1** The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997.

§ 13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997.

*(Paragraphs deleted)*

§ 13.3 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.2 of this Agreement.

*(Paragraph deleted)*

13.4 The Contractor shall not be entitled to any portion of savings to the GMP in accordance with Article 5.2.1, if the Owner terminates his Contract for cause (as opposed to termination for convenience) or if the Contractor terminates this Contract for any reason prior to Substantial Completion.

#### ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

14.1.1 In connection with any litigation arising out of this Contract, the prevailing party shall be entitled to recover from the other party said prevailing party's reasonable attorney's fees and costs, including attorneys' fees and costs for any bankruptcy, trial and appellate proceedings. The exclusive jurisdiction and venue for all litigation shall be in a Court of competent jurisdiction in Miami-Dade County, Florida.

14.1.2 The Contractor shall supervise and direct the Work, using his best skill and attention and shall be solely responsible for all construction means, methods, materials, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ any unfit person or anyone not skilled in the task assigned to him.

14.1.3 The Contractor warrants to Owner and agrees as follows:

- (a) That it has examined the premises as well as the Contract Documents that exist as of the date of this Contract and understands the labor, materials and services to be furnished and the equipment necessary to perform and satisfy the obligations of this Contract.
- (b) That all such labor, materials, services and equipment shall be in accordance with the Contract Documents.

14.1.4 Architect and Owner's Representative represent the Owner during the performance of all Work. All questions that arise during bidding/construction will be directed to the Architect.

14.1.5 The Contractor shall exercise due care to protect persons and property during the performance of Work. Contractor shall schedule its Work to avoid or minimize disruption and/or interference to surrounding properties adjacent to the Project. Contractor shall schedule its Work to comply with all applicable ordinances. Any additional land and access thereto required for temporary construction areas, construction parking or facilities for storage of materials shall be procured and provided by the Contractor with no liability to the Owner, its employees, agents and the Architect.

14.1.6 INTENTIONALLY OMITTED.

14.1.7 The Contractor shall timely review, and submit all Product Data and Samples required by the Contract Documents. The Work shall be performed by the Contractor in accordance with reviewed submittals. Submittals reviewed by the Architect and returned without rejection shall constitute part of the Contract Documents, superceding any conflicting provisions. All materials shall be delivered to the Project in original containers bearing



the manufacturer's name, compliances, and applicable approvals. All materials shall be properly stored and protected from damage at all times prior to application.

**14.1.9** No materials shall be used after they become damaged. Unacceptable materials identified and marked by Architect shall be immediately removed and replaced by the Contractor at its own cost and expense.

**14.1.10** Contractor shall notify the Owner of adjacent utilities and properties when prosecution of the Contract may affect those items.

**14.1.11** Prior to commencing Work, Contractor shall furnish to Owner and Architect a videotape of the Project, adequately depicting the condition of all surrounding property including but not limited to the adjacent buildings and underground structures, parking facilities, roads, utilities and other improvements. The videotape shall be labeled and marked with the date when the videotape was taken by the Contractor.

**14.1.12** The Contractor shall use best efforts to protect and prevent damage to all surrounding areas where Work is being performed, including but not limited to, the protection of the Work from damage by the climate, theft, or vandalism. All Work and storage areas shall be maintained in a neat/clean condition.

**14.1.13** Prior to commencement of Work and continuing until Final Completion, including completion of all Punch List Work, Contractor shall provide on-site portable toilet facilities for workmen. Contractor shall impose reasonable restrictions upon its agents and employees while performing Work at the Project.

**14.1.14** This Contract replaces any and all prior agreements or understandings between the parties hereto (whether written or oral) and cannot be modified except in a written document signed by Owner and Contractor. This Contract shall not be interpreted or construed to create any rights to others as third party beneficiaries with respect to the obligations set forth in this Contract.

**14.1.15** This Contract is the joint product of the parties and shall not be interpreted or construed more strictly against any party.

**14.1.16** Time is of the essence of this Contract. Where necessary to effectuate the intent of the parties, the agreements herein shall survive Final Payment to Contractor, termination or expiration of this Contract.

**§ 14.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

Seven (7%) percent per annum

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

**§ 14.3** The Owner's representative is:  
*(Name, address and other information.)*

Richard Schuerger  
Gables Marquis, LLC.  
7284 West Palmetto Park Road, Suite 106  
Boca Raton, Florida 33433

**§ 14.4** The Contractor's representative is:  
*(Name, address and other information.)*

Michael R. Neal  
Coscan Construction, LLC.

5555 Anglers Avenue, Suite 1A  
Fort Lauderdale, Florida 33312

§ 14.5 The Contractor's representative and other project and senior management shall not be changed without written notice to and approval by Owner. Owner shall have the right to request that Contractor remove and replace any project personnel, for good cause, without and additional cost or expense to the Owner.

§ 14.6 Other provisions:

None.

**§ 14.7 WARRANTY**

§ 14.7.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Anything herein or in any other Contract Document contained to the contrary notwithstanding, and to the extent permitted by applicable law, it is understood and agreed that the Contractor does not give any warranty whatsoever (expressed or implied) concerning the Work and/or its performance to either the Owner or the Architect or any other person except those expressly set forth herein and required under Chapter 718, Florida Statutes, pertaining to condominiums. The warranties described in this Subparagraph 3.5 shall only be effective for a period of one (1) year from the date of Substantial Completion of the Work or portion thereof, except to the extent a longer time period is required under Section 718.203(2) (Florida Statutes).

§ 14.7.2 THE WARRANTIES DESCRIBED IN SUBPARAGRAPH 3.5.1 ARE THE ONLY WARRANTIES COVERING THIS PROJECT AND ARE GIVEN IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, STATUTORY OR COMMON LAW, AND ALL SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND HABITABILITY, ARE HEREBY EXCLUDED (EXCEPT TO THE EXTENT REQUIRED UNDER SECTION 718.203(2) (FLORIDA STATUTES), IN THE EVENT THAT ANY OTHER PROVISIONS WITHIN THE CONTRACT DOCUMENTS CONFLICTS WITH OR CONTRADICTS THIS PROVISION, AND NOTWITHSTANDING SECTION 1.2 OF THE AGREEMENT, THIS PARAGRAPH 3.5 SHALL GOVERN.

§ 14.7.3 Notwithstanding anything contained herein to the contrary and to the extent permitted by applicable law, the Owner's remedy under any warranty from the Subcontractor shall be limited in the first instance to the correction/repair of the Work by the Subcontractor (not monetary damages) and Owner shall give Contractor and Subcontractor a reasonable opportunity to correct/repair any warranty items of which Owner has timely given Contractor and Subcontractor written notice within the warranty period as required hereunder, prior to seeking monetary damages or any other remedy available to Owner set forth in the Contract Documents.

**§ 14.7.4 WARRANTY AND TURNOVER ALLOWANCE**

§ 14.7.4.1 The Owner and the Contractor desire to minimize potential unit purchaser dissatisfaction due to differing perceptions regarding the time required to investigate, plan, and remedy real or perceived defects or deficiencies within the boundaries of a particular condominium unit or in common areas. As a mechanism to attempt to relieve this problem, and without admitting fault in any manner, the parties to this Agreement mutually agree to establish a Warranty and Turnover Allowance ("Warranty Allowance") within the GMP. The Warranty Allowance line item shall be paid to the Contractor in the Final Payment by the Owner and shall be for the use by Contractor after Substantial Completion, for the purposes described below, and for the period of time set forth in Section 14.7.4.7 below. *THE ESTABLISHMENT OF THE RIGHTS, REMEDIES AND OBLIGATIONS UNDER THIS WARRANTY ALLOWANCE SECTION SHALL BE IN ADDITION TO, AND NOT A LIMITATION OF, THE PARTIES' RIGHTS, REMEDIES AND OBLIGATIONS UNDER THIS AGREEMENT.*

§ 14.7.4.2 The Contractor shall establish an interest bearing account in the Contractor's name and shall use this



Warranty Allowance to create an environment of rapid response and problem resolution for the individual unit purchasers, and for the condominium association when the alleged defects or repair problems are related to the common areas of the Project. The Contractor shall be entitled to draw from Warranty Allowance to investigate, respond, and/or remedy alleged deficiencies or defects, without any determination of whether the alleged deficiency or defect is the responsibility of either the Owner or the Contractor; subject to Owner's approval rights as set forth below.

**§ 14.7.4.3** Upon receipt from the Owner of a notice of an alleged defect in construction, and after initial discussion with the Owner to mutually attempt to determine the responsibility for the defect, the Contractor will immediately notify the potentially responsible Subcontractor(s) in writing with a request to rectify the defect in construction. After issuing the required written notice to an appropriate Subcontractor, the Contractor shall advise the Owner in writing of the actions which the Contractor deems necessary to attempt to resolve the defect or repair issues with the affected unit owner or condominium association, as well as an estimate of the costs and expenses which Contractor expects to incur. The Owner shall have seven (7) days to approve (or disapprove) Contractor's intended actions, and the Owner's approval shall not be unreasonably withheld or subject to conditions imposed by the Owner. If approval is not timely provided by the Owner, Contractor shall be deemed to be fully authorized to proceed with Contractor's intended actions and draw from the Warranty Allowance. The Contractor shall utilize its best judgment consistent with the purpose of the Warranty Allowance to determine whether to wait for the Subcontractor(s) to attempt to rectify the defect or for the Contractor to take more rapid action to rectify the defect or otherwise resolve the issue alleged.

**§ 14.7.4.4** The Contractor shall account for the expenditure of all amounts drawn from the Warranty Allowance on a case-by-case basis. Amounts that are assessed against the Warranty Allowance for the materials and labor and related costs to repair or rectify defects shall be invoiced to the appropriate Subcontractor(s), if any. The Contractor shall be entitled to pay from the Warranty Allowance all costs of all warranty related matters including the costs associated with investigations and repairs, plus the costs of the management and administration of the warranty issues at the established rates for the Contractor's personnel.

**§ 14.7.4.5** The amount of the Warranty Allowance shall be \$200,000 and shall be drawn by the Contractor as part of the Final Payment.

**§ 14.7.4.6** Contractor shall have sole discretion whether to pursue or continue the pursuit of recovery from Subcontractors. The net amount of funds received by the Contractor from Subcontractors to reimburse the Contractor for the costs of rectifying defects on behalf of Subcontractors (less costs and expenses, including but not limited to attorney's fees, incurred by Contractor to recover from Subcontractors), shall be returned to the Warranty Allowance.

**§ 14.7.4.7** Any unexpended funds remaining in the Warranty Allowance account established by the Contractor, at the earlier of (a) the execution by the condominium association of a full and final waiver and release in favor of the Contractor, or (b) five (5) years after Substantial Completion (unless litigation with the condominium association remains on-going at the end of the 5 year period, in which case the Warranty Allowance shall remain available for use as described above until the Contractor receives a full and final waiver and release in favor of the Contractor), shall be returned by Contractor to the Owner.

## **ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 15.1** The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

**§ 15.1.1** The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

§ 15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

§ 15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated \_\_\_\_\_, and are as follows:

Document	Title	Pages
(Paragraph deleted)		
N/A		
(Paragraphs deleted)		

§ 15.1.5 The Drawings and Specifications are as follows, and are dated \_\_\_\_\_ unless a different date is shown below:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit:

See Exhibit "I" Drawings prepared by Architect

§ 15.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
(Paragraph deleted)		

§ 15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:  
(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit "A" - Drawing Log (inclusive of Specifications)

Exhibit "B" - GMP Estimate Summary (with attached General Conditions Estimate Detail)

Exhibit "C" - Assumptions and Clarifications

Exhibit "D" - Allowances

Exhibit "E" - Baseline Project Schedule

Exhibit "F" - Payment and Performance Bond Forms

These executed and initialed documents referenced herein shall constitute the Contract Documents and shall be definitive as to the Scope of Work and the intention of Parties to this Contract. These executed and initialed documents supersede any prior bid documents, quotes, proposals, correspondence, communications, plans, drawings exchanged between the Parties.

#### ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.) Contractor shall provide Payment and Performance Bonds ("Bond") in accordance with the forms attached as Exhibit F. The Penal sum of the Bond shall be Twenty Million Dollars.

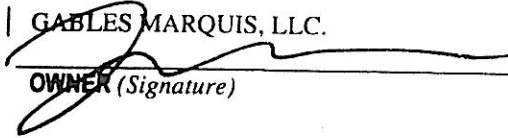
See AIA Document A-201 1997 General Conditions of the Contract for Construction.

See A201 Article 11 Coverages and Limits.



This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

GABLES MARQUIS, LLC.

  
OWNER (Signature)

JOHN K. MARKEY V.P.

~~Elic Berdugo, Senior Partner~~

(Printed name and title)

COSCAN CONSTRUCTION, LLC.

  
CONTRACTOR (Signature)

Michael R. Neal, President

(Printed name and title)

# AIA<sup>®</sup> Document A201<sup>™</sup> – 1997

## **General Conditions of the Contract for Construction**

### **for the following PROJECT:**

*(Name and location or address):*

Gables Marquis  
3232 Coray Way  
Miami, Florida 33016

### **THE OWNER:**

*(Name and address):*

Gables Marquis, L.L.C.  
7284 West Palmetto Park Road, Suite 106  
Boca Raton, Florida 33433

### **THE ARCHITECT:**

*(Name and address):*

Cohen Freedman Encinosa & Associates Architects, P.A.  
8085 N.W. 155<sup>th</sup> Street  
Miami, Florida 33016

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### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

This document has been approved and endorsed by The Associated General Contractors of America



14 TERMINATION OR SUSPENSION OF THE CONTRACT

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 THE PROJECT MANUAL**

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.



**§ 1.3 CAPITALIZATION**

**§ 1.3.1** Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

**§ 1.4 INTERPRETATION**

**§ 1.4.1** In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 1.5 EXECUTION OF CONTRACT DOCUMENTS**

**§ 1.5.1** The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

**§ 1.5.2** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**§ 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 1.6.1** The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

**ARTICLE 2 OWNER**

**§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

**§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or

continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.2** Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.4** Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

*(Paragraph deleted)*

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

**§ 2.3.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

**§ 2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

**§ 3.1.4** On a monthly basis or at other times deemed necessary by the Owner, meetings shall be conducted among the Owner, Contractor, Architect, and appropriate subcontractors and consultants to discuss the status of the Work. The Contractor shall prepare and distribute written meeting minutes to all attendees within forty-eight (48) hours from



the conclusion of each meeting. At each meeting Contractor shall distribute for Owner's review the following updated and current information 1) a detailed schedule for the upcoming fourteen (14) days in the form required by the Contract Documents; 2) Submittal Log; 3) Requests for information ("RFI") Log; and 4) Change Order log, including an identification of any and all pending or potential issues that may impact the GMP or Contract Time. Contractor shall provide all parties with a written schedule of these monthly meetings within ten (10) days from commencement of Work.

**§ 3.1.5** The Contractor shall maintain a daily log containing a record of weather, subcontractors working on the site, the number of workers, equipment on site, Work accomplished, problems encountered and similar relevant data as the Owner may reasonably require. The Contractor shall provide the daily logs to the Owner on a monthly basis. Throughout the Project, the Owner and Architect shall have access to the log and copies shall be provided to the Owner and Architect, five (5) business days from the date of receipt of a Contractor's written request from the Owner.

### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

**§ 3.2.2** Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

**§ 3.2.3** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.4 LABOR AND MATERIALS**

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**§ 3.5 WARRANTY**

§ 3.5.1 See Warranty Section 14.7 of the Agreement.

**§ 3.6 TAXES**

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**§ 3.7 PERMITS, FEES AND NOTICES**

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.8 ALLOWANCES**

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual

costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

**§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

**§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 3.10.4** Contractor shall update and deliver the Project Schedule and all updates to Project Schedules to Owner and Architect with each Application for Payment or at a minimum every thirty (30) days beginning with the commencement of construction. Review of schedules and updated schedules by Owner and/or Architect shall not be interpreted or construed to constitute approval by the Owner as to the accuracy or reasonableness of the schedule(s).

**§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

**§ 3.11.1** The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

**§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.



**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

**§ 3.12.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

### **§ 3.13 USE OF SITE**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by

excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

#### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

#### **§ 3.16 ACCESS TO WORK**

**§ 3.16.1** The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

#### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

**§ 3.17.1** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

#### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

#### **§ 4.1 ARCHITECT**

**§ 4.1.1** The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

**§ 4.1.2** Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

**§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 4.2.2** The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 4.2.4** Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or



procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

**§ 4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

#### **§ 4.3 CLAIMS AND DISPUTES**

**§ 4.3.1** Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ 4.3.2** Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

**§ 4.3.3** Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 4.3.4** Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If

the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

**§ 4.3.5 Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

**§ 4.3.6** If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

**§ 4.3.7 Claims for Additional Time**

**§ 4.3.7.1** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**§ 4.3.7.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

**§ 4.3.8 Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 4.3.9** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**§ 4.3.10 Claims for Consequential Damages.** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES**

**§ 4.4.1 Decision of Architect.** Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 4.4.2** The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

**§ 4.4.3** In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 4.4.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

**§ 4.4.5** The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

**§ 4.4.6** When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

**§ 4.4.7** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 4.4.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

#### **§ 4.5 MEDIATION**

**§ 4.5.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

**§ 4.5.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**§ 4.5.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.



**§ 4.6 ARBITRATION**

**§ 4.6.1** This arbitration clause is deleted in its entirety and all references to arbitration shall be deemed to be deleted from the Contract Documents. Notwithstanding anything to the contrary contained in the Contract Documents, Owner and Construction Manager shall not be required to submit to arbitration any claim or dispute arising out of, or in connection with, the Contract Documents unless Owner and Construction Manager hereafter agree in writing to arbitrate that particular dispute. Such agreement shall not establish an automatic right in either party to arbitrate subsequent claims or disputes.

*(Paragraphs deleted)*

**ARTICLE 5 SUBCONTRACTORS**

**§ 5.1 DEFINITIONS**

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

**§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

**§ 5.3 SUBCONTRACTUAL RELATIONS**

**§ 5.3.1** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The

Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

#### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

##### **§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

##### **§ 6.2 MUTUAL RESPONSIBILITY**

**§ 6.2.1** The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**§ 6.2.3** The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The

Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

**§ 6.2.4** The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

**§ 6.2.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### **§ 6.3 OWNER'S RIGHT TO CLEAN UP**

**§ 6.3.1** If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 GENERAL**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### **§ 7.2 CHANGE ORDERS**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

- .1 change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

### **§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.3.6.



**§ 7.3.4** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.5** A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.6** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.7** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.8** Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

**§ 7.3.9** When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### **§ 7.4 MINOR CHANGES IN THE WORK**

**§ 7.4.1** The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

#### **ARTICLE 8 TIME**

##### **§ 8.1 DEFINITIONS**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.



**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

**§ 9.6.5** Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.7 FAILURE OF PAYMENT**

**§ 9.7.1** If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

**§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so

that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security

interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**§ 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or



anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

**§ 10.2.8** All materials intended to become a permanent part of the structure shall be covered by Owner-provided Builder's Risk insurance, and no deductible shall apply with respect to any losses related to such materials. The Owner shall have no responsibility or liability relating to any small tools or equipment that may be stored or utilized at the Project (except and only to the extent that Owner-provided Builder's Risk insurance covers losses with respect to such items). Except as covered by the Builder's Risk policy, the Contractor shall bear the costs which are related to loss of small tools or equipment, or which are not covered due to the application of deductible under the Owner-provided Builder's Risk Insurance or which otherwise are not covered losses.

**§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

**§ 10.4** The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

**§ 10.5** If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

## § 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

From date of the commencement of construction until a period of thirty (30) days after the Substantial Completion of the Work, or if sooner authorized by Owner in writing, Contractor shall maintain insurance with minimum coverage as set forth below, with each of the Owner and Lender to be named as an additional insured.

<u>Kind of Insurance</u>	<u>Minimum Limits</u>
(a) Workmen's Compensation	Statutory
(b) Employer's Liability	\$2,000,000 each accident or disease or such higher amount as may be required by law.
(c) Contractor's Commercial General Liability Including products and completed operations, independent contractors and contractual liability	\$1,000,000 each occurrence \$1,000,000 Product and Completed Operations Aggregate \$2,000,000 General Aggregate Limit
(d) Automobile Bodily Injury Liability (including hired and non-ownership liability)	\$1,000,000 each accident
(e) An umbrella policy for all coverage Except workers compensation	\$4,000,000.00 each occurrence

The policies of insurance to be issued pursuant to this Section 11.1 shall (a) provide that same shall not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to Owner and Lender; (b) be from insurance companies that have a current A M Best's ratings of A VI or better; and (c) be primary to any and all insurance carried by the Owner.

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.2 OWNER'S LIABILITY INSURANCE**

**§ 11.2.1** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

**§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE**

**§ 11.3.1** Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

**§ 11.3.2** To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

**§ 11.3.3** The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

**§ 11.4 PROPERTY INSURANCE**

**§ 11.4.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.4.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 11.4.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof



shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**§ 11.4.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ 11.4.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.4.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**§ 11.4.2** Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

**§ 11.4.3** Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**§ 11.4.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**§ 11.4.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.4.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

**§ 11.4.7** Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.4.8** A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.4.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.4.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

#### **§ 11.5 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.5.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**§ 11.5.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### **§ 12.2 CORRECTION OF WORK**

##### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.1.1** The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously

given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

**§ 12.3.1** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

**§ 13.1.1** The Contract shall be governed by the law of the place where the Project is located.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **§ 13.3 WRITTEN NOTICE**

**§ 13.3.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.



**§ 13.4 RIGHTS AND REMEDIES**

**§ 13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 13.4.2** No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**§ 13.4.3.** In connection with any litigation arising out of this Contract, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable attorneys' fees and costs, including attorneys' fees, paralegal fees and investigative costs and expenses, for any bankruptcy, trial and appellate proceedings and preparation therefor. Jurisdiction and venue for all litigation shall be in a court of competent jurisdiction in Miami-Dade County Florida. THE PARTIES EXPRESSLY WAIVE TRIAL BY JURY IN ANY DISPUTES SOLELY BETWEEN THE PARTIES TO THIS CONTRACT.

**§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

**§ 13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

**§ 13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.5.5** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.6 INTEREST**

**§ 13.6.1** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

**§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

**§ 13.7.1** As between the Owner and Contractor:

- .1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged

cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

- .2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 TERMINATION BY THE CONTRACTOR**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### **§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, a Termination for Convenience Fee of \$215,000, in lieu of overhead and profit on the Work not executed.